Court No.3

Criminal Revision No. 154/2001
(Old No. 1544/2000)

Smt. Sheel Kumari Nigam …… Revisionist.

Versus

B.K. Vashistha & another …….. Respondents.

Hon'ble Irshad Hussain, J.

None appeared for the revisionist and respondent No.1. Heard Sri G.S.Sandhu learned A.G.A. and perused the record.

In criminal case No. 430/ 1975 State versus Ram Nath and others an application under section 319 of the Code of Criminal Procedure (hereinafter referred as 'Code') was moved before the A.C.J.M.1 Ist Dehradun on the ground that there were sufficient reasons to proceed also against three persons namely Amar Nath, Bhagwan Dass and B.K.Vashistha for offences punishable under sections 420, 467, 468, 471/ 120-B I.P.C. The application was moved when the statement of prosecution witness H.S.Nigam P.W.1 was recorded. On the application of the complainant the cross examination was differed, in view of the submission of application under section 319 of the Code, and the learned Magistrate on the basis of appreciation of evidence of P.W.1 was of the opinion that these three persons were instrumental for fabrication of the power of attorney etc. of Km. Nigam along with the accused who had been charge sheeted after the investigation. In view of the above the learned Magistrate exercising the power under the provision of section 319 of the Code decided to proceed against these three persons also and they were directed to be summoned per order dated 25.1.1007.

Subsequently an application paper No. 208 was filed to recall the said order but the same was dismissed on merit by the Additional C.J.M. Ist Dehradun by order dated 31.3.98. Aggrieved by the said order the respondent No.1 preferred the revision which was numbered as criminal revision No. 77/1998 B.K. Vashistha vs. State and the same was heard and

decided by Ist Additional Sessions Judge Dehradun who accepted the contention of the revisionist and allowed the revision thereby set aside the order dated 31.3.98. The original order passed on application under section 319 of the Code on 25.1.1007 was however not set aside by the learned Sessions Judge and in fact the said order remained legally intact.

However having gone through the record it is evidence that the learned Sessions Judge was guided by the argument that the order to proceed against three accused was passed on appreciation of the statement of P.W.1 in his examination-in-chief without the witness being subjected to cross examination to test his testimony and further that the application under section 319 of the Code; was not preferred by the Prosecuting Officer but the complainant himself. The first contention is not legally sustainable because for exercising powers under section 319 of the Code there was no necessity that the cross examination of P.W.1 should have been concluded. Further if any application was not moved by the State under section 319 of the Code it would not mean that the complainant who was aggrieved by non-submission of the charge sheet against all the culprits was legally barred or moving any application under the said provision and to make a submission that there was cogent reasons to proceed against these three accused persons along with one who was charge sheeted after investigation of the case. On both the counts the learned Sessions Judge made an error in assailing the order of learned Magistrate to proceeding against these three persons and in the totality of the circumstances of the case when there was definite evidence of P.W.1 that these three persons were also instrumental in fabrication of the power of attorney etc there was no occasion to interfere with the order passed on merit by the learned magistrate. Even though by the impugned judgment and order the learned Sessions Judge has not set aside the original order of proceeding against the three accused persons under section 319 of the Code and it will be in the fitness of things that the judgment and order of the Sessions Judge is set aside so that lateron it may not be claimed that the earlier order of the learned Magistrate was challenged and it stand set aside.

For the above reasons and discussion there being force in the present criminal revision, the judgment and order dated 24.5.2000 is liable to be set aside. The revision is accordingly allowed and the judgment and order dated 24.5.2000 is set aside.

The trial of the criminal case No. 433/95 shall be expedited.

(Irshad Hussain, J.)

Dated: 8-9-2003

ISB